No. 25-243

Supreme Court of the United States

HON. WES ALLEN,
IN HIS OFFICIAL CAPACITY AS THE ALABAMA SECRETARY OF STATE, ET AL.
Applicants,

v.

MARCUS CASTER, ET AL.
Respondents.

ON APPLICATION FOR STAY PENDING DISPOSITION OF PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

EMERGENCY APPLICATION FOR STAY

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

The district court ordered Alabama to use a race-based congressional map that admittedly "does not achieve all the political goals of the legislature." App.514. That order segregated more than a million Alabamians into different districts because of their race. It is irreconcilable with *Louisiana v. Callais*, 608 U.S. ___ (2026). For that reason and others, Alabama is highly likely to succeed in its pending motion that this Court vacate the injunctions and remand the cases in light of *Callais*. *See* Mot. to Expedite, No. 25-274 (Apr. 30, 2026). So that the State has an opportunity to return to its lawfully enacted 2023 Plan this election cycle, and because the Court is not scheduled to issues orders from its next conference until May 18—one day before the May 19 primary—the State respectfully requests a stay by **May 14 at 10 a.m. ET** if the Court is unable to expedite consideration of these cases in light of *Callais*.

After *Milligan v. Allen*, 599 U.S. 1 (2023), Alabama enacted a new redistricting plan rather than further litigate the lawfulness of the 2021 Plan at issue in *Allen*. This Court upheld a preliminary injunction against the 2021 Plan in part because it split one community of interest, the Black Belt, while keeping together another, the Gulf Coast. *See Allen*, 599 U.S. at 21-22. The new 2023 Plan prioritized the Gulf Coast, Black Belt, and Wiregrass communities of interest equally.

After a full trial on the 2023 Plan, there was no dispute that adding a second majority-minority district would require cracking the Gulf Coast into two districts, separating Mobile's black voters from Mobile's white voters to join them with black voters elsewhere in a new district that might elect a Democrat. *E.g.*, App. 339-40,

345, 493-94, 530-31. But for fifty years, the State has recognized the Gulf Coast as a community of interest that is best represented with one voice in Congress. App.348; *see* J.S. 4-7, 11-12. The district court forced the State to sacrifice that goal. But *Callais* says that alternative maps "must achieve [the State's] goals just as well." Slip Op. 29. The district court held it was not required to "fully disentangle party and race." App.372; *id.* at 389-92. But *Callais* says "§2 plaintiffs must disentangle race from politics." Slip Op. 25. The Court is highly likely to vacate the injunctions because they rest on an incorrect interpretation of the Constitution and §2.

Alabama's case mirrors Louisiana's, and they should end the same way: with this year's elections run with districts based on lawful policy goals, not race. Preceding *Callais*, Louisiana plaintiffs obtained a preliminary injunction on the ground that Louisiana's 2021 districts likely violated §2. Likewise in *Allen*, the Court affirmed a preliminary injunction that Alabama's 2021 Plan likely violated §2. Rather than litigate the lawfulness of those plans on the merits, both States redistricted.

But Louisiana's SB5 used race to draw another majority-black district, and that was wrong. Alabama's 2023 Plan did not use race, and that was right. With the 2023 Plan, Alabama avoided the inconsistent treatment that led to the preliminary injunction against the 2021 Plan while still achieving the State's neutral goals (like protecting incumbents) and refusing to let race predominate. For complying with *Callais* before *Callais*, Alabama's 2023 Plan was deemed the product of "racial animus" (App.523) and enjoined. After enacting a racial gerrymander, Louisiana is now free to hold elections under a lawful map consistent with its policy goals.

Alabama seeks the same opportunity. This week, the Alabama Legislature held a special session "to consider legislation to provide for a special primary election for electing members of the United States House of Representatives … in districts whose boundary lines are altered by a court issuing a judgment, vacating an injunction, or otherwise ordering or permitting an alteration in the boundaries of such districts."[1] The bill that seems poised to become law would not create a new map but reinstate the "last legislatively enacted Congressional districts"—the 2023 Plan—and authorize a special primary in the event court injunctions are lifted.[2] Alabamians should be able to vote under a lawfully enacted map that prioritizes the State's conceded policies rather than a map that elevates race above them.

Plaintiffs complain that it is too late. But that is for the state legislature to decide. *See Democratic Nat'l Comm. v. Wisc. State Leg.*, 141 S. Ct. 28, 28-30 (2020) (Gorsuch, J., concurring). Because *Purcell* applies to "federal intrusion on state lawmaking processes," *id.* at 28 (Roberts, C.J., concurring), invoking it *to sustain* that intrusion would turn the doctrine on its head. Relief here would restore, not upset, "the delicate federal-state balance in elections." *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025). If the Court is highly likely to vacate the injunctions in light of *Callais*, it should not delay simply because "[o]ne may disagree with [the] State's policy choice," *Wisc. State Leg.*, 141 S. Ct. at 34 (Kavanaugh, J., concurring), to hold elections under the State's preferred districting plan.

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[1] Proclamation by Governor Kay Ivey (May 1, 2026), https://governor.alabama.gov/newsroom/2026/05/2026-first-special-session-proclamation/.

[2] Alabama House Bill 1, https://alison.legislature.state.al.us/files/pdf/SearchableInstruments/2026SS1/HB1-int.pdf.

Plaintiffs would have Alabama hold elections under a map that was erroneously ordered at best and unconstitutional at worst. Nothing requires that result. Americans, no less in Alabama, deserve a republic free of racial sorting *now*, and state officials deserve an opportunity to give it to them.[3]

OPINIONS BELOW

Applicants seek a stay pending appeal of the permanent injunctions of the 2023 Plan entered on May 8, 2025, and the remedial orders and injunctions entered on August 7, 2025. The district court's memorandum opinion in *Singleton v. Allen*, No. 2:21-cv-1291, and *Milligan v. Allen*, No. 2:21-cv-1530, is available at 2025 WL 1342947 (N.D. Ala. May 8, 2025) and reproduced at App.9-558. The single-judge court in *Caster v. Allen*, No. 2:21-cv-1536, adopted the opinion of the three-judge court. App.5-6. The court's injunction and final judgment in *Singleton* is reproduced at App.1018-91, in *Milligan* at App.1020-21, and in *Caster* at App.1022-23. An order retaining jurisdiction accompanied the final judgments. App.1024-37.

[3] Applicants first sought a stay from the district court on May 5 and asked for a ruling by the afternoon of May 6. The court ordered Plaintiffs to respond by close of business on May 7, which they did. The court has yet to rule. Applicants come to this Court to ensure it has time to rule, and they respectfully ask the Court to consider the application now. First, Applicants have complied with Rule 23.3 by seeking a stay from the court below; under the circumstances, that request has been constructively denied. Due to the timing and the threat of harm, *infra* §II, these are also "extraordinary circumstances." Rule 23.3. Second, the underlying cases are already pending before this Court, two of three having been appealed as-of-right. *See* 28 U.S.C. §1253. This Court is now best positioned to decide whether its decision in *Callais* warrants vacating and remanding. Third, Alabama has been enjoined from using its 2023 Plan since 2023, so it is doubtful that the present circumstances are contemplated by Federal Rule of Civil Procedure 62(d), which permits a district court otherwise divested of jurisdiction to suspend an injunction. *Turner v. HMH Pub. Co.*, 328 F.2d 136, 137 (5th Cir. 1964); *accord Dillard v. City of Foley*, 926 F. Supp. 1053, 1075 (M.D. Ala. 1995).

BACKGROUND

A. Alabama's 2021 congressional map was preliminarily enjoined. The Black Belt, a region in Alabama named for its "fertile black soil," App.46 n.8, was a "critical issue[ ]" (App.937), or as Plaintiffs put it—the "heart of th[e] case," Br. of *Milligan* Respondents 5, No. 21-1086 (U.S. filed July 11, 2022). The district court took issue with how the 2021 Plan split the 18 Black Belt counties because it was possible "to split the Black Belt less." App.947. After this Court affirmed, rather than proceeding to a full trial on the 2021 map, Alabama enacted a new map that corrected the deficiencies this Court had pointed out in *Allen v. Milligan*, 599 U.S. 1 (2023), and kept *both* the Black Belt and the Gulf Coast communities of interest in as few districts as possible. App.545 (SB5).

B. In setting redistricting priorities for the new plan, the Legislature declared that the Black Belt would "be kept together to the fullest extent possible." *Id.* The 2023 Plan thus placed the Black Belt's 18 core counties into two districts (the fewest possible) and unified Montgomery County, the most populous area of the Black Belt. App.546. The Legislature also prioritized keeping the Gulf Coast's two counties together given the region's "long history and unique interests." App.546. The 2023 Plan also accomplished this goal. App.553. There was no longer an unnecessary "split community of interest." *Allen*, 599 U.S. at 21.

Nonetheless, Plaintiffs moved to preliminarily enjoin the 2023 Plan. This time, the heart of their case was whether Alabama could keep the Gulf Coast together. Plaintiffs argued that §2 *requires* splitting the Gulf Coast by segregating Mobile County so that Mobile's black voters could be combined with black voters in the Black

Belt to form a second majority-black district. *See* App.340 ("The record contains no map that includes two majority-Black districts without splitting Mobile County, and all agree that it is not possible to draw such a map without splitting Mobile County.").

The Legislature had good reasons to avoid segregating Mobile's white and black voters. The Alabama Attorney General warned the Legislature that placing the race of voters ahead of traditional districting principles "would likely open the State up to claims that it has violated the Constitution's Equal Protection Clause," invoking this Court's weeks-old decision in *SFFA v. Harvard*, 600 U.S. 181 (2023). *See Caster v. Allen*, No. 2:21-cv-1536, DE319-25:152.[4] And the *Singleton* Plaintiffs reminded legislators during the 2023 special session that a "trial on the merits is still pending," *id.* at 144-45; *Milligan*, DE404-32:71-73, on the racial gerrymandering claims they had brought based on county splits, App.997-99. Facing those competing hazards, Alabama passed what it believed were §2-compliant districts while prioritizing nonracial traditional districting principles such as respecting communities of interest, App.545-49, and protecting incumbents by "not pair[ing] [them] within the same district," App.544.

C. The district court preliminarily enjoined the 2023 Plan. App.568. The 2024 congressional elections proceeded on a court-drawn plan combining parts of Mobile

[4] "[E]vidence admitted in any one of the three cases"—*Singleton*, *Milligan*, or *Caster*—"could be used in the other two cases absent a specific objection." App.40. "DE" cites refer to the district court docket of the case indicated. "J.S." cites refer to the jurisdictional statement filed in *Milligan*, which—save for minor differences to reflect each case's procedural posture—is substantively identical to the statement in *Singleton* and the petition in *Caster*.

with Montgomery County and ending at the Georgia border. *See* App.16, 1037. That plan remains in place today due to the district court's injunctions. App.1018-19.

The State then fully litigated the lawfulness of the 2023 Plan. By close of trial, the following was undisputed: (1) both the Black Belt and the Gulf Coast are communities of interest to be respected in any reasonably configured map, *see* App.340, 346; (2) one could create equally populated districts by "keep[ing] the Gulf Coast together and split[ting] the Black Belt into only two districts" as the State did, App.354-55; (3) every alternative map that adds a majority-minority district splits the Gulf Coast, *see* App.340; and (4) the only way to form a second majority-minority district is by "splitting Mobile County" and combining it with rural Black Belt counties hundreds of miles away, App.340; *see also* App.126-127, 206-210.

1. After trial, the district court permanently enjoined use of the 2023 Plan, reasoning that Plaintiffs' alternatives respected the Black Belt "much better" by placing more Black Belt counties in majority-black districts. App.345. This shifted the goalposts. In 2022, the question was whether Alabama's plan produced impermissible racial effects by not "keeping the Black Belt together" in "as few congressional districts as possible." App.937. But in 2025, the question was whether Alabama's plan flunked §2 for failing to draw black voters from the Black Belt and black voters *from elsewhere* into "a majority-Black district." App.345. With this race-based rubric, the court held that *Gingles* tolerates—and §2 therefore requires—an alternative map that splits an undisputed community of interest (the Gulf Coast) in order to combine black Mobilians with black voters in the Black Belt. App.355.

The district court rejected Alabama's defenses regarding the proper application of §2 and constitutional requirements. As to the argument that race predominated in the illustrative plans, the court reasoned that race did not predominate in large part because experts "testified at trial that race did not predominate." App.359. And although the court credited the Gulf Coast as a community of interest, it was satisfied with maps that split Mobile because—in its words—States "cannot prioritize" communities of interest "above compliance with Section Two." App.348. Though §2 "never require[s] adoption of districts that violate traditional redistricting principles," *Allen*, 599 U.S. at 30, to the district court, sacrificing this principle was necessary so Alabama could not "skirt Section Two by excelling at whatever traditional districting principle the Legislature deems most pertinent," App.329.

2. The court further held that Alabama violated the Fourteenth Amendment. As the district court saw it, the 2023 Legislature made a "deliberate decision not to satisfy" the district court's 2022 opinion and order—a preliminary injunction barring the 2021 Plan. App.456, 491-92. The court said, "[p]reliminary injunctions are preliminary, but they are not advisory." App.517. Which is true. But what the court *meant* by that statement is that "the State had no basis to expect it could enact a new plan" lacking "the remedy we said federal law required," App.518—"two districts in which Black voters either comprise a voting-age majority or something quite close to it," App.13—and "still receive our blessing for the plan," App.518. Which should be false. The State was entitled to try to "persuade" the district court at trial that there was no dilution in the new 2023 Plan. App.22. Yet that attempt was deemed *proof* of

"a deliberate decision to double down on the dilution of Black Alabamians' votes," App.492, and "an attempt to evade a court order," App.520. The court thus held that Alabama was required to treat the preliminary injunction on a preliminary record as dispositive—and not just for the 2021 Plan, which was repealed, but for any plan for the rest of the decade.

The court found "there was no basis" for Alabama's concerns about the competing hazards of complying with §2 and the Constitution. App.521-22. Rejecting those concerns as "implausible," *id.*, the court found that Alabama discriminated in 2023 by *not* discriminating: to the court, Alabama's failure to move "much of the Black Belt" and "Black Alabamians in Mobile" out of their "White district[s]" violated the Fourteenth Amendment. App.489, 518.

Finally, the court admitted that there was no alternative plan that "achieve[s] all the political goals of the Legislature, particularly the goal of keeping Mobile and Baldwin Counties whole and together in one congressional district." App.514. But this again somehow counted as proof that race, rather than recognized "political goals," motivated the Legislature. *Id.*

Based on the district court's intentional-discrimination holding, Plaintiffs asked that the VRA's "bail-in" provision be applied to require Alabama to preclear future changes to congressional districts. App.486; *see* 52 U.S.C. §10302(c). The court

denied that request without prejudice and retained jurisdiction until Alabama enacts new congressional districts based on 2030 census data. App.1036.[5]

D. On August 26, 2025, Applicants filed jurisdictional statements in *Allen v. Singleton*, No. 25-273, and *Allen v. Milligan*, No. 25-274, as well as a petition for writ of certiorari in *Allen v. Caster*, No. 25-243. On April 29, 2026, the Court decided *Callais v. Louisiana*, Nos. 24-109, 24-110, and the next day, Applicants moved for expedited consideration of their jurisdictional statements and certiorari petition. Applicants also moved for a stay in the district court, which has yet to rule.

[5] As part of their effort to avoid preclearance and assuage the court's concerns about an "infinity loop that no court order can break," App. 516—the idea that Alabama could simply keep passing new maps and force plaintiffs and the court to start back at square one each time—Applicants agreed that the Special Master plan would "remain in place for the 2026, 2028 and 2030 congressional elections (as well as all special or other congressional elections prior to the adoption of a new congressional district map based on 2030 census data), subject to Defendants' rights on appeal," *Milligan* DE497:2; that "while reserving all other appellate rights, Defendants … will not challenge on appeal the duration of an injunction that requires the Secretary of State to use the [Special Master] Plan for the 2026, 2028, and 2030 congressional elections," *id.*; and that "[w]hile Defendants maintain their arguments about the necessity and constitutionality of any remedial plan, Defendants do not plan to submit any further remedial plan so long as the Special Master's Remedial Plan 3 remains in place, thus maintaining the status quo pending any appeal," *Milligan* DE493:3. Applicants were clear: "These statements are provided subject to the Defendants' rights to appeal, which the Defendants explicitly reserve. Except as explicitly stated, nothing in this notice is intended to constitute a waiver of any right or argument." *Id.*

In their opposition to Applicants' stay motion below, the *Caster* plaintiffs chopped up these representations to make it appear as though Applicants had waived the right to seek a stay or expedition and should be judicially estopped from seeking such relief. *See Caster* DE429:7 ("Defendants' waiver of any right to a stay of the injunction could hardly have been more explicit. They told the Court they would 'voluntarily forgo any rights' to replace the Special Master Plan *specifically* to 'maintain[] the status quo pending appeal.'"). The record is clear that Applicants waived only (1) their right to challenge the injunction based on its duration and (2) their right to draw a remedial map or enact a new map before the injunction is lifted. They have complied with those representations.

ARGUMENT

I. There is more than a fair prospect that the Court will vacate the district court's injunctions in light of *Callais*.

A. By the district court's own admission, no alternative map "meet[s] all the State's legitimate districting objectives."

The district court expressly rejected arguments to apply the first *Gingles* precondition in accordance "with the text of §2 and constitutional principles." *Callais* Slip Op. 29. As a result, §2 liability rested on "pro[of] only that the State *could* create an additional majority-minority district, not that failure to do so violated §2." *Id.*

The Court should vacate the injunctions for this reason alone: The district court applied the wrong test. *Wellons v. Hall*, 558 U.S. 220, 225-26 (2010) ("A GVR is appropriate when intervening developments reveal a reasonable probability that the decision below rests upon a[n] [incorrect] premise … such [that] a redetermination may determine the ultimate outcome." (citation modified)). Applying the proper framework, there is more than an "appear[ance]" (*id.*) that the 2023 Plan did not violate §2, and the district court's §2 remedy was a racial gerrymander.

1. Alabama argued that Plaintiffs had not offered proper comparator maps because they fared poorly on neutral districting criteria compared to the 2023 Plan. *See, e.g.*, *Milligan* DE481:64-76. No alternative map preserved the two Gulf Coast counties, comprising the Gulf Coast community of interest, in a single district. Many of the alternatives split the Black Belt counties among three, four, and even five districts. They all fared worse at protecting incumbents (and ultimately, incumbent Rep. Jerry Carl lost his seat).

To this, the district court *agreed with the State* that no alternative to the 2023 Plan "achieve[s] all the political goals of the Legislature," App.514, observing that it was "impossible" to draw another race-based district in Alabama while achieving the State's valid legislative goals. *E.g.*, App.493, 504.

Nonetheless, the district court held that the illustrative plans could satisfy *Gingles* 1 even if "they underperform against the 2023 Plan on various metrics." App.328. Indeed, the court said that illustrative plans need not "outperform" on "*any* particular[ ] metric," even the "traditional districting principle[s] the Legislature deems most pertinent." App.328-29 (emphasis added).

Callais firmly rebuffed that reasoning. An illustrative plan that does not hold constant "whatever opportunity results from the application of the State's combination of permissible criteria" (*id.* at 22) cannot "demonstrate that the State's chosen map was driven by racial considerations rather than permissible aims. *Only* by meeting *all* the State's legitimate objectives can the illustrative maps help to 'disentangle race' from politics and other constitutionally permissible considerations," *id.* at 29-30 (emphasis added). In contrast, the district court thought that "requiring a plaintiff to meet or beat an enacted plan" or "satisf[y] a particular [redistricting] principle" would "immunize" "racial[ ] discriminat[ion]." App.329. But as *Callais* clarified, plaintiffs must do more than "show that it is *possible* to draw" a map that achieves *some* of the Legislature's goals, App.363; they must produce maps that "meet all … the State's specified political goals," *Callais* Slip Op. 29.

2. Applying the wrong test was not harmless error. The district court forced the State to sacrifice a variety of valid goals, such as maintaining the Gulf Coast community of interest in one district, maintaining the Black Belt in two districts, and protecting incumbents. J.S. 6-7, 10-14, 33-35. For example, in contrast to the preliminary litigation over the 2021 Plan, the State defended the 2023 Plan by building a robust trial record about the Gulf Coast, such that the court ultimately had to "accept" what was disputed three years ago—"that the Gulf Coast is a community of interest." App.348; *see Allen*, 599 U.S. at 21 ("Only two witnesses [at the preliminary-injunctions stage] testified that the Gulf Coast was a community of interest."). Accordingly, the "State object[ed] to any plan that splits Mobile County." App.339. But Plaintiffs failed to draw a map that satisfied this important goal: "every Duchin Plan, every Cooper Plan, and the Special Master Plan" carved up the Gulf, and "[t]he record contains no map that includes two majority-Black districts without splitting Mobile County." *Id.* at 339-40. That should have been dispositive at *Gingles* 1, for illustrative maps "must meet all the State's legitimate districting objectives … just as well." *Callais* Slip Op. 29.

Yet the district court thought it was not "mandat[ory] … [to] prioritize the Gulf Coast" over other factors, App.348-49, and speculated that "splitting a county in [this] community of interest does not necessarily harm [it]," App.350. Aside from directly contradicting the court's earlier statement that "[f]ewer splits are generally better," App.938, whether to split a community like the Gulf Coast among multiple districts is "up to each State to decide," *Callais* Slip Op. 24, because it's a legislative question

that has "no legal answer," *Banerian v. Benson*, 589 F. Supp. 3d 735, 738 (W.D. Mich. 2022) (Kethledge, J.) (quoting *Rucho v. Common Cause*, 588 U.S. 684, 708 (2019)). Under the proper framework, there is no room for federal courts to replace or redefine a State's constitutionally permissible redistricting goals. *Callais* Slip Op. 24.

The district court also erred by premising §2 liability on illustrative plans that failed to protect incumbent representatives whom "the legislature sought to protect." *Callais* Slip Op. 33; *see* App.544 (SB5) ("The congressional districting plan shall not pair incumbent members of Congress within the same district."); App.94 (State's mapmaker: "I was looking at … not pairing incumbents, which, obviously we had incumbents that could have been paired there in terms of Barry Moore in Coffee County and Jerry Carl in Mobile[.]"). The district court refused to give "weight" to incumbency because it thought doing so would "defeat the Voting Rights Act." App.356. The district court was badly mistaken, for §2 liability cannot be proven with a map that "fail[s] to meet the State's political goals, including incumbency protection." *Callais* Slip Op. 33. This failure caused a direct and undeniable harm to the State's interests, as one of its incumbents "was not reelected to Congress." App.356. As in Louisiana's case, "because the plaintiffs' illustrative maps failed to protect all the incumbents that the State sought to shield, the plaintiffs did not meet their burden on [the first *Gingles*] precondition." *Callais* Slip Op. 34.

B. Because "race was used" to draw and evaluate illustrative maps, they had "no value" to prove a §2 violation.

The district court identified §2 liability based on illustrative plans that "use[d] race as a districting criterion" and were produced by "a process that would be

unconstitutional if [the] State [had] engaged in such mapmaking." *Callais* Slip Op. 29. The Court must—at a minimum—vacate and remand to apply the proper test.

1. The 2023 Plan avoided what was found at the preliminary-injunction stage to be inconsistent treatment of the Black Belt in the 2021 Plan. By placing the Black Belt counties into just two districts, the Legislature achieved its "non-negotiable" goal of keeping the Black Belt "together to the fullest extent possible." App.544-45 (SB5). The district court shared that goal in 2022, App.937, but its permanent-injunction opinion changed this neutral criterion into a racial one, violating *Callais* twice over. *See* J.S. 6-7, 10-14.

First, the district court used race to define what it means to "respect" the Black Belt community of interest, faulting the 2023 Plan for placing "only half [ ] of the … Black Belt counties [ ] in a majority-Black district," App.345. But "it is up to each State to decide" whether and how to respect communities of interest, *Callais* Slip Op. 24, and it was plainly legitimate for the Legislature to make unifying the Black Belt a legislative priority. By imposing an expressly racial criterion, the district court's *Gingles* analysis failed to "disentangle race from politics." *Id.* at 25.

Second, the district court employed a racial double standard when it explained *its* disparate treatment of communities of interest in terms of "Black voting strength." App.355. The Gulf Coast community could be "divided" because it was not "cracking," according to the court. *Id.* The latter refers only to "the dispersal of black[ ]" voters, which the court took to have special salience at *Gingles* 1, whereas splitting a community of interest where more white voters reside "precipitates no such racially

discriminatory harm." *Id.* Again, this is circular reasoning because "Black voting strength" (*id.*) cannot be used to define the "baseline … chance" to elect one's preferred candidates. *Callais* Slip Op. 21. Pointing out the dispersal of a minority group in a districting plan "sheds no light" on whether the State's failure to draw an additional majority-minority district violates §2. *Id.* at 29; *accord* J.S. 22-23 (arguing that using such double standards is unconstitutional).

2. Race was used to draw the alternative plans. Alabama has always objected to the canard that Plaintiff mapmakers satisfy *Gingles* so long as they "testif[y] that they did not give race a predominant role as they drew." App.360; *see Milligan* DE481 ¶234. Perhaps some earlier case law supported that approach, but the Constitution and §2 do not. *See* J.S. 12-13. The State could not take "minority voting strength [to be] a traditional redistricting principle," as Bill Cooper did, or "screen[ ] out" maps lacking two majority-black districts, as Moon Duchin did, App.359-60, without raising a "strong" "inference of racial motivation," *Callais* Slip Op. 23. The district court failed to appreciate that "plaintiffs cannot use race as a districting criterion" any more than a State can, *id.* at 29, which is "almost never," *id.* at 17.

If the State had "configured" its districts to achieve a specific black voting-age population in District 2, it would have been an "express acknowledgment that race played a role." *Callais* Slip Op. 33. Indeed, the *only* reason to extract "part of Mobile" (what the district court previously called "Black Mobile," App.708 (quoting Plaintiffs' expert Joseph Bagley)) is to connect it with black populations hundreds of miles away, J.S. 12-13 (quoting Plaintiffs' expert Bill Cooper)—the same reason Louisiana drew

a district from Baton Rouge to Shreveport, *Callais* Slip Op. 14-16. The district imposed on Alabama may not be as "squiggly" as the one Louisiana drew, *Callais*.Oral.Arg.41, but it is a racial gerrymander all the same.

C. The district court relied on "*inter*-party racial polarization [that] proves nothing" and circumstances other than "present-day intentional racial discrimination regarding voting."

The remainder of the district court's *Gingles* analysis was also flawed, as *Callais* has since clarified. As to racially polarized voting, this Court held that plaintiffs "must disentangle race," *Callais* Slip Op. 25 (quotation omitted), by "show[ing] that voters engage in racial bloc voting that cannot be explained by partisan affiliation," *id.* at 30. But the district court held that *Gingles* "do[es] not require that we fully disentangle party and race." App.372; *see also* App.392. Instead, the court relied heavily on the mere correlation between race and party, App.364-69, and rejected as "fictional" the idea "that race and party" can be viewed as "separate and independent factors," App.389. The court took to be an "obvious truth[ ]" that "issues of race drive" voting patterns. App.391. As a result, the court erroneously relied on testimony that "on average, Black voters supported [Democrats] with 92.3% of the vote" while "White voters supported [Democrats] with 15.4% of the vote." App.366. These statistics "prove[ ] nothing" because they fail to answer the "critical" question whether race—not party affiliation—drives voting. *Callais* Slip Op. 30; *see* J.S. 19 & n.4. The court then repeated its legal error at the totality-of-circumstances stage, rejecting the possibility that the effect of "party politics" could be a ground to "deny Section Two relief." App.392. Plaintiffs will respond by cherry-picking findings that they say *could* support their §2 claims under *Callais*, but "it would be highly

inappropriate to assume" that the district court would make the determination under a different legal test. *Wellons*, 558 U.S. at 225.

At the totality-of-circumstances stage, the district court concluded that Alabama has not "yet outrun the effects of its past," App.455, drawing on an enormous amount of decades-old history and socioeconomic data with little-to-no "bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting," *Callais* Slip Op. 30; *see* App.373-428.

This Court need look no further than the district court's belief that it would be "very unusual" for a defendant to lose on the *Gingles* preconditions but the win on the totality of circumstances. App.373 (citation modified); *contra Callais* Slip Op. 31 (contemplating that it may be "hard to find pertinent evidence"). That may be true *if* courts can give serious weight to facts like a 6% gap in high-school graduation rates, App.173; Ben Carson's defeat in the 2016 Republican primary, App.146; and hearsay testimony about what a plaintiff's mother "remembers" from the 1950s, App.180. But under *Callais*, these kinds of facts—generalized disparities, the choices of private citizens, harms unrelated to voting discrimination, and "sordid history" from decades ago—are not "germane." *Callais* Slip Op. 31; *see* Supp. Br. for Robinson Appellants 45-47, *Callais*, No. 24-109 (U.S. Aug. 27, 2025).

The district court did not focus on "intent to discriminate" because (it said) "intent is not an element." App.36. But, given constitutional limits, the relevant circumstances are just those that "give rise to a strong inference of racial discrimination"—an intentional act. *Callais* Slip Op. 35. Losing sight of §2's goal, the

district court relied on generalized racial and socioeconomic disparities, *e.g.*, App.404-12, and discounted the State's arguments about the present "parity in rates of voter registration and turnout," *e.g.*, App.411. The court thus misinterpreted what it means to deny the "equal opportunity to vote," *Brnovich v. DNC*, 594 U.S. 647, 671 (2021), "jumped right to the Senate Judiciary Committee Report," *Callais* Slip Op. 7, "failed to disentangle race from politics," *id.* at 34, and downplayed how much "things have changed," *id.* at 26-27. In short, the district court's ageless reach into Alabama's past and amorphous inquiry into the present did not "show[] even a plausible likelihood of intentional discrimination by the State" in enacting the 2023 Plan. *Callais* Slip Op. 34. The court applied the wrong standard, and its injunctions must be vacated. *See* J.S. 16, 18-20, 23-25.

D. The district court's equal-protection holding cannot stand.

After *Callais*, the State should succeed in overturning the district court's equal-protection holding as well. J.S. 27-35. In *Milligan*, the district court held that Alabama was *constitutionally required* to segregate Mobile into different districts based on race. App.489, 518. But refusing to discriminate is not discrimination.

Consider how the district court's logic would have applied in Louisiana. According to the court below, when a State does not "create an additional Black-opportunity district" after a preliminary finding of likely vote dilution, the State has "the purpose of entrenching what it knew from federal court orders was very likely discriminatory" and therefore "purposefully deprive[s] Black [voters] of the same opportunity to elect a candidate." App.539. Faced with a preliminary §2 finding,

Louisiana was therefore constitutionally *required*—on this view—to draw another majority-minority district. Of course, *Callais* held the opposite: Louisiana was constitutionally *prohibited* from drawing another majority-minority district. Instead, Louisiana should have "double[d] down" on its traditional districting criteria and constitutional defenses. App.528. That's what Alabama did, and the district court punished it—not for violating the preliminary order (which it did not), App.515-16, but for having the gall to enact a better map, present a better record at trial, and ultimately try "to 'find another argument' to persuade" the district court that *there was no §2 violation*. App.22. Trying to persuade a federal court is not "open disregard for federal court rulings," no matter how many times they say it. *Milligan* D. Ct. Stay Opp. at 6 (May 7, 2026), DE523 (citation omitted). And it is not intentional discrimination either.

The Court's opinion in *Callais* undermines the district court's discrimination holding in several ways. First, the alleged violation here was that the 2023 Plan had "purposefully … refused to provide" "the remedy that federal law requires." *E.g.*, App.489. Putting aside that a preliminary injunction says only what is *likely* required, J.S. 29-31, the district court had an erroneous view of "federal law." *Supra* §I.A-C. Because it applied the wrong standard when it held that §2 likely obligated the State to draw a new race-based district, its constitutional holding built on that premise must be vacated.

Second, *Callais* emphatically vindicates the State's concern that it would have risked constitutional liability by subordinating state interests to connect black voters

in Mobile with rural black voters on the other side of the State—some "250 miles" away. *Callais* Slip Op. 16. Constitutional claims were pending *in these cases* when Alabama drew its new map. App.457-58. Because *Callais* was an "eas[y]" case, Slip Op. 33, it is more than "plausible" that Alabama feared the same outcome had it drawn lines based on race to create a second race-based district, J.S. 27-33; *see Alexander v. S.C. Conf. NAACP*, 602 U.S. 1, 10 (2024). Even if *Callais* had not so clearly proven the litigation risk to using race, the district court erred in finding "racial animus" (App.523) behind the State's effort to *avoid* the noxious practice of sorting voters by race. J.S. 32-33.

Third, the district court betrayed the presumption of good faith, which required drawing inferences in the State's favor whenever plausible. *Alexander*, 602 U.S. at 10; *LULAC*, 146 S. Ct. at 419-20. State officials had contact with the Republican Speaker of the House, App.524; they spoke in terms of a "Republican opportunity plan," App.483; they enacted incumbency protection as a "non-negotiable" redistricting principle, App.544-55 (SB5); and they passed the 2023 Plan along party lines. That's more than enough to suggest that partisan politics were at work. J.S. 34-35. The district court's attempt to distinguish *Alexander* as a "round-one case" was unpersuasive before *Callais*, J.S. 30-32 (discussing *Abbott v. Perez*, 585 U.S. 579, 584 (2018)), and has no force after *Callais*, which relied heavily on *Alexander* for the need to disentangle race and politics—even in "a round-two case." *Contra* App.525-26.

Fourth, Plaintiffs did not "carry [their] disentanglement burden" with "an alternative map that achieves all the State's objectives—including partisan

advantage and any of the State's other political goals—at least as well as the State's map." *Callais* Slip Op. 25. The district court conceded that neither the illustrative map nor the court-drawn map achieved "all the political goals of the legislature," App.514, including protecting the State's incumbent congressmen from being paired against each other, App.356; *see* App.544-55 (SB5). Because these alternative maps could not even show "circumstances [that] give rise to a strong inference of discrimination" under §2, *id.* at 35, they also could not rise to the level of proving discrimination under the Equal Protection Clause.

The district court misinterpreted both the Constitution and §2. It makes no sense to say that seeking "partisan gain" is "evad[ing]" federal law. App.525. There is no violation of the Constitution or §2 when a State adopts a redistricting plan for political or policy reasons, so there is no violation to "evade" or "excuse." *Id.* As the State explained in its opening briefs, the district court's entire constitutional holding rests on this kind of circularity—rejecting the State's defense to liability on the ground that it would be a defense to liability. But after *Callais*, "courts must treat partisan advantage like any other race-neutral aim … that States may rely on as desired." Slip Op. 25. The district court did not apply that standard, and its injunctions must be vacated.

* * *

Last, *Allen v. Milligan*, 599 U.S. 1 (2023), does not control the outcome of this case any more than it controlled the outcome of *Callais*. *Allen* was about the since-repealed 2021 Plan in a preliminary injunction posture. At the time, Plaintiffs could

use race to some degree in their illustrative maps. *Id.* at 30. At the time, Alabama had hoped for a new "evidentiary standard" (*Callais* Slip Op. 31) to reconcile Plaintiffs' burden of proof in §2 litigation with the State's constitutional requirements in redistricting. Those arguments did not succeed and others were not yet explored, given the case's preliminary-injunction posture. *See Allen*, 599 U.S. at 26; *see also id.* at 45 (Kavanaugh, J., concurring). After *Allen*, rather than continue to litigate the 2021 Plan on the merits, the State replaced it with the 2023 Plan. A full trial on the 2023 Plan followed, and all agreed it was "impossible" to draw another majority-minority district without sacrificing the State's lawful policy goal of keeping the Gulf Coast together, among others. Throughout the course of those proceedings on the merits of the 2023 Plan, Alabama raised the exact issues decided in *Callais*. There is no reason they should be decided or applied differently from *Callais*.

II. Alabama will suffer imminent and irreparable harm without a stay or immediate vacatur; the equities and public interest favor the State.

The State faces two sources of irreparable harm from the district court's injunctions. One: they disable the State from conducting elections using its lawfully enacted 2023 Plan, which "clearly inflicts irreparable harm on the State." *Abbott*, 585 U.S. at 602 n.17 (citing *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). Two: they force the State to use instead a map that is highly likely to be an odious racial gerrymander, which would violate the "constitutional rights" of voters, *Callais* Slip Op. 35, and which "bears an uncomfortable resemblance to political apartheid," *Alexander*, 602 U.S. at 11. The district court's ongoing interference continues to "upset[ ] the delicate federal-state balance in elections," and

it seems only this Court can undo it. *LULAC*, 146 S. Ct. at 419; *accord Democratic Nat'l Comm. v. Wisc. State Leg.*, 141 S. Ct. 28, 28-30 (2020) (Gorsuch, J., concurring); *id.* at 28 (Roberts, C.J., concurring); *id.* at 31-34 (Kavanaugh, J., concurring).

Plaintiffs will not be harmed by a stay because they would receive exactly that to which they are "entitled" under the law: "whatever opportunity results from the application of the State's combination of permissible criteria." *Callais* Slip Op. 22.

A stay would also further the public interest because the 2023 Plan is "itself a declaration of public interest." *Virginian Ry. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937); *see Berman v. Parker*, 348 U.S. 26, 32 (1954) ("[W]hen the legislature has spoken, the public interest has been declared in terms well-nigh conclusive[.]"). Being "a traditional domain of state [ ] authority," *Callais* Slip Op. 24, redistricting "is a legislative task which the federal courts should make every effort not to pre-empt," *Wise v. Lipscomb*, 437 U.S. 535, 539-40 (1978) (op. of White, J.) (collecting cases).

To be sure, election day in Alabama is fast approaching. But the legislature is currently addressing whether election deadlines could be shifted to conduct special elections under the 2023 Plan if the injunction is promptly lifted. If Alabamians can have an election free of racially sorted congressional districts, they should have the opportunity.

And it is not too late to act. Though Plaintiffs told the district court that the *Purcell* principle meant it could not stay its injunction, *Milligan* DE523:1, *Purcell* is rooted in federalism principles and the recognition that States—though not courts—have the expertise necessary to determine how to conduct elections. As Justice

Kavanaugh put it: "It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent." *Wisc. State Leg.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). This case is the opposite of *Purcell*: Applicants ask this Court to vacate or stay an injunction, not to impose one.

CONCLUSION

The Court should enter a stay pending appeal of the injunctions barring the State from using the 2023 Plan or, alternatively, expedite consideration of these cases in light of *Callais*.

Respectfully submitted,

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